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SERVICE DATE - AUGUST 7, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 591X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
CLARK AND FLOYD COUNTIES, IN

Decided: August 6, 2001

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 3.8-mile line of railroad between milepost B-50.5 near Clarksville and milepost B-54.3 near New Albany, in Clark and Floyd Counties, IN. Notice of the exemption was served and published in the Federal Register on July 9, 2001 (66 FR 35826-27). The exemption is scheduled to become effective on August 8, 2001.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 13, 2001. In the EA, SEA states that the National Geodetic Survey (NGS) has advised that seven geodetic station markers have been identified that may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT be required to notify NGS 90 days prior to salvage activities to plan the relocation of the markers.

SEA also states that the U.S. Department of the Interior, Fish and Wildlife Service, Bloomington Field Office (FWS), has advised that the abandonment corridor includes Silver Creek (Creek) and traverses adjacent forested wetlands. FWS further states that the proposed project is within the range of the federally endangered Indiana bat (*Myotis sodalis*) and Gray bat (*M. grisescens*) and the threatened bald eagle (*Haliaeetus leucocephalus*). FWS advised that the Creek is a major foraging area for a colony of gray bats, which forage for insects chiefly along forested waterways. Therefore, SEA recommends that conditions be imposed requiring CSXT to: (1) minimize tree clearing and avoid wetland disturbance for access to work areas; (2) avoid discharge of demolition debris, waste material, or other pollutants into Silver Creek or wetlands; (3) contain disturbed soils, if earthmoving is required, to prevent runoff to waterways or wetlands; and (4) avoid work in the stream channels during the primary fish spawning season from April 1 through June 5, if the bridge located at Silver Creek is to be removed.

Finally, SEA states that the Indiana State Historic Preservation Officer (SHPO) has not yet completed its review of the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring CSXT to retain its interest in and take no steps to alter the integrity of sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

SEA indicates that the right-of-way may be suitable for other public use following abandonment. On June 21, 2001, the Civil Town of Clarksville, IN, the City of New Albany, IN, and the City of Jefferson, IN (collectively Proponents), political subdivisions interested in transportation and recreation, filed a request for the issuance of a notice of interim trail use (NITU) for the right-of-way under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with applicant for acquisition of the right-of-way for use as a recreational trail. Proponents request that CSXT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Proponents state that the time period is needed in order to complete negotiations with CSXT. Proponents submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and they have acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed July 9, 2001, CSXT indicated its willingness to negotiate with Proponents for interim trail use.¹

Because Proponents' request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, provided that the environmental conditions imposed in this decision are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

¹ Proponents state that they do not include in their trail use request that portion of the right-of-way that is being purchased and preserved by the Indiana Department of Transportation (INDOT), which is currently undertaking construction, widening and improvement of Interstate 65 in the northern Louisville area, including the addition of entrance and exit ramps connecting Interstate 65 to State Route 131.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Proponents have satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the Proponents, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for abandonment of the line described above is subject to the conditions that CSXT shall: (a) notify NGS 90 days prior to salvage activities in order to plan for the location of the geodetic station markers identified; (b) comply with the FWS concerns regarding: (i) minimize tree clearing and avoid wetland disturbance for access to work areas; (ii) avoid discharge of demolition debris, waster material, or other pollutants into Silver Creek or wetlands; (iii) contain disturbed soils, if earthmoving is required, to prevent runoff to waterways or wetlands; (iv) avoid work in the stream channels during the primary fish spawning season from April 1 through June 5, if the bridge located at Silver Creek is to be removed; and (c) retain its interest in and take no steps to alter the historic integrity of all sites or structures on the line that are 50 years old or older until completion of the section 106 process of the NHPA.
3. The notice of exemption served and published in the Federal Register on July 9, 2001, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below for the portion of the right-of-way not needed by INDOT, subject to the condition that CSXT keep intact that portion of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days from the August 8, 2001 effective date (until February 3, 2002), to enable any state or local government agency or other interested person to negotiate its acquisition for public use. If an interim trail use/rail banking agreement is executed before the 180-day period specified above,

the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line segment.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by February 3, 2002, interim trail use may be implemented. If no agreement is reached by that time, applicant may fully abandon the line.

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary